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# State Governance Beyond the 'Shadow of Hierarchy': A social mechanisms perspective on governmental CSR policies

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## Abstract

The extent to which state authorities can regulate the externalities and the behaviour of multinational corporations (MNCs) is limited. This is especially true when MNCs operate in or do business with fragile states that lack the willingness and/or resources to effectively and legitimately regulate businesses. However, MNCs often engage in private regulation to remedy some of the problems that unregulated business behaviour creates. In this article we examine what limits the effectiveness and legitimacy of the contributions made by MNCs to global governance. We explore the mechanisms that state authorities in functioning states can use to overcome these barriers as well as the boundary conditions of these mechanisms at both company and government levels. We provide a framework for governmental CSR policies and describe the ways in which functioning states engage in governance beyond the 'shadow of hierarchy' and directly or indirectly influence business conduct beyond the territory in which their legal regulations can be enforced.

## Keywords

complexity, effectiveness, global governance, governmental CSR policies, legitimacy

Gaps in governance abound in today's globalized world. They are especially pronounced in nation states that are not able or willing to influence directly the activities of private actors and to provide public goods (Bénabou & Tirole, 2010; Knill & Lehmkuhl, 2002). Many companies respond to these shortcomings by engaging in corporate social responsibility (CSR). They address negative externalities (Crouch, 2006; Kitzmueller & Shimshack, 2012), provide public goods (Kaul,

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Conceição, Le Goulven, & Mendoza, 2003), or close governance gaps outside the regulatory influence of nation states (Keohane, 2001; Wolf, 2005). However, the effectiveness and legitimacy of CSR activities to serve as a ‘patch’ for governance gaps are contested (Bernstein & Cashore, 2007; Börzel & Risse, 2010; Gereffi & Lee, 2016). ‘Effectiveness’ refers to the degree to which CSR activities adequately solve collective problems, while ‘legitimacy’ refers to the degree to which these activities are socially acceptable.

Traditionally, researchers analyse CSR from a firm-centric perspective and define it as the purely voluntary (i.e. beyond legal obligations) activities that companies undertake in an effort to take into account social and environmental concerns (e.g. European Commission, 2001; McWilliams & Siegel, 2001). In recent years, however, the role of governments in CSR has also been explored. From this perspective, CSR is regarded as one element in a ‘smart mix’ of public and private regulation (Kinderman, 2016; Ruggie, 2013). Indeed, CSR has become an integral element of the policies of many public actors; namely, national authorities, such as the Danish (Knudsen & Moon, 2017) and Austrian (Konrad, Martinuzzi, & Steurer, 2008) governments, and international organizations, such as the EU and the OECD (DeSchutter, 2008; Knudsen, Moon, & Slager, 2015; Midttun, Gjølberg, Kourula, Sweet, & Vallentin, 2015; Steurer, 2010).

We define *governmental CSR policies* as the systems of public goals, strategies, laws, regulations, incentives and funding priorities that governmental agencies or their representatives use to motivate, facilitate and shape the CSR activities of companies. The literature provides a comprehensive overview of the ends of governmental CSR policies and the means that their implementation involves (Abbott & Snidal, 2009; Fox, Ward, & Howard, 2002). However, governmental CSR policies and their influence mechanisms on CSR activities of private actors have yet to be thoroughly analysed (Knudsen & Moon, 2017). In order to address this gap, the present paper will investigate the principal barriers to effective and legitimate CSR. To that end, we present a framework for analysing the mechanisms through which governmental CSR policies can deal with these barriers.

We limit our analysis to multinational corporations (MNCs) that are headquartered in countries with a functioning institutional framework, but operate in or do business with ‘fragile states’ where democratic and rule-of-law control systems do not work sufficiently, and where public authorities often lack the capacity or the willingness to address externalities or to provide public goods (Naudé, Santos-Paulina, & McGillivray, 2011; The Fund for Peace, 2018). Normally, companies operate under the ‘shadow of hierarchy’ of their home countries. In the political sciences the concept ‘shadow of hierarchy’ is used to describe a situation where private actors voluntarily alter their behaviour in order to avoid adverse governmental regulations by democratic regimes (Héritier & Eckert, 2008; Schillemans, 2008). However, in cases where MNCs operate beyond the reach of the regulatory frameworks of democratic rule-of-law states, they operate beyond the shadow of hierarchy.

With this study we aim to make three contributions. First, whereas extant research focuses largely on describing different forms of governmental CSR policies, we advance the literature by theorizing the *social mechanisms* that underlie these policies. We understand a social mechanism as ‘a process in a concrete system, such that it is capable of bringing about or preventing some change in the system as a whole or in some of its subsystems’ (Bunge, 1997, p. 414; see also Hedström & Ylikoski 2010). This makes it possible to explore how specific governmental CSR policies work and interact and to formulate the boundary conditions for the viability of governmental CSR policies on the level of companies. Second, we reconsider the debate on *obligation and voluntariness in CSR activities* and show why neither purely directive approaches that rely on obligation nor purely facilitative approaches that rely on voluntariness are likely to increase the effectiveness and legitimacy of CSR. Third, we explore the *boundary conditions* that governments face when engaging in CSR policies.

The paper is structured as follows. In the second section, we discuss current barriers to the effective and legitimate participation of companies in global governance. In the third section, we analyse and illustrate the mechanisms that governments can employ within the scope of their CSR policies to induce private contributions to global governance. Finally, we discuss the theoretical implications of our analysis and conclude with a summary.

## Business Contributions to Global Governance

### *CSR as a 'patch' for gaps in governance*

The processes of globalization imply that the regulatory influence of nation states is diminishing as transnational corporations expand their operations beyond the jurisdiction of their home countries (Ruggie, 2007; Scherer & Palazzo, 2011; Wolf, 2005). In response, state authorities engage in a plethora of regulatory activities on the national and the international level (Levi-Faur, 2005) and still exert considerable power, despite globalization (Wood & Wright, 2015). For instance, numerous successful multilateral agreements involve legal obligations for companies. Two examples are the Montreal Protocol on Substances that Deplete the Ozone Layer (DeSombre, 2000) and the Stockholm Convention on Persistent Organic Pollutants (Truelsen, 2005).

However, there are several problem areas, often involving companies, in which governments and international organizations have only limited influence. Examples are climate change (Griggs et al., 2013) and human rights violations in international supply chains (Young, 2004). In the case of climate change, problems arise because it is difficult to observe and determine what causes and who is responsible for externalities. Moreover, such externalities often involve fragile states that have neither the willingness nor the capacity to address them (The Fund for Peace, 2018). In the case of human rights, despite the widespread ratification of the ILO conventions on forced labour and child labour, there is ample evidence that the conventions are breached continuously and on a large scale (ILO, 2012), partly because global production largely takes place in fragile states. Currently, over two thirds of the world's nation states are described as fragile states with deficient governance systems (The Fund for Peace, 2018). However, fragile states such as PR China, India and Mexico are among many MNCs' preferred locations for direct investment (UNCTAD, 2016, p. 5) or international trade (WTO, 2015, p. 27).

Against this background, companies increasingly pursue CSR goals in an attempt to fill these gaps in governance (Jackson & Rathert, 2017; Scherer & Palazzo, 2011). Generally understood, CSR describes corporate 'actions that appear to further some social good, beyond the interests of the firm and that which is required by law' (McWilliams & Siegel, 2001, p. 117). Limiting negative externalities (Crouch, 2006) and providing public goods (Besley & Ghatak, 2007) are usually regarded as the desired outcomes of CSR activities.

To explore the potential and limits of CSR to contribute to global governance, it is necessary to distinguish between various related, yet different, phenomena that are usually discussed under the umbrella term CSR. Typically, CSR is exercised by individual companies or by firm associations at the industry level, and companies voluntarily submit to governance schemes that entail varying degrees of obligation. Such schemes (for an overview, see Auld, Bernstein, & Cashore, 2008) include codes of conduct issued by trade associations such as the Equator Principles (see, e.g., Haack, Schoeneborn, & Wickert, 2012), environmental management systems such as the ISO 14000 (see, e.g., Boiral, 2007), transparency initiatives such as the Global Reporting Initiative (see, e.g., Etzion & Ferraro, 2010), non-state market-driven governance systems run by certification bodies (Cashore, 2002) and governance initiatives such as the United Nations Global Compact (UNGC).

## *The barriers to the functioning of CSR as a well-working element of global governance*

The success of companies' CSR actions in furthering 'some social good' (McWilliams & Siegel, 2001, p. 117), is subject to at least four barriers: motivation, capabilities, complexity and legitimacy. First, as a basic condition, business actors must be *motivated* to engage in collective decisions and to pursue collective goals 'beyond the interests of the firm' (McWilliams & Siegel, 2001, p. 117) despite adverse incentive structures. Second, they need to have or need to develop the *capabilities* to work towards attaining these collective goals. Such capabilities comprise the necessary human resources, structures, procedures, knowledge and technologies (Gold, Malhotra, & Segars, 2001). Third, they have to deal with *complexity* as MNCs operate under the conditions of heterogeneous institutional demands, conflicting stakeholder expectations and 'wicked' problems that are poorly understood (Greenwood, Reynard, Kodeih, Micelotta, & Lounsbury, 2011; Kostova & Zaheer, 1999). As a consequence, collective goals are often unclear and contested, and the means–ends relationships for attaining collective goals are neither fully known nor controlled. If the barriers of *motivation, capabilities* and *complexity* are overcome, CSR activities will be effective. However, without social acceptance of those who are affected by corporate decisions companies cannot ensure the sustained inflow of necessary material and immaterial resources (Pfeffer & Salancik, 1979). Therefore, fourth, the success of the employed CSR measures depends on the *legitimacy* (Suchman, 1995) of companies and their CSR activities. Taken together, the potential of CSR activities to solve collective problems, i.e. to be effective and legitimate (Börzel & Risse, 2005; Risse, 2006; Sørensen & Torfing, 2009), depends on simultaneously overcoming the four discussed barriers.

This overview indicates that one barrier to implementing CSR is *motivation*, in the sense that in the global capitalist system companies respond to its inherent economic incentives. Consequently, companies seek profit opportunities, dedicate resources that facilitate their business ambitions, and address certain problems at the expense of other problems (Fleming & Jones, 2013). In the latter case, the economic incentives prevent them from investing sufficient resources in their CSR activities. However, despite these adverse incentives, many companies engage in CSR. Research shows that they do so for several reasons (Auld et al., 2008; Bénabou & Tirole, 2010; Scherer & Palazzo, 2011). First, companies engage in CSR in response to legal requirements, such as the increasingly widespread demands for non-financial reporting (see, e.g., Kinderman, 2013). Second, companies may use CSR to increase profit (McWilliams & Siegel, 2001) and reduce material and reputational risks (Heal, 2005) in line with the rationale of the 'business case for CSR' (Carroll & Shabana, 2010), which many companies cite as the economic justification for social engagement. This motive is primarily economic, which implies that companies will seek to contribute to global governance if they are convinced that this helps them increase profits, but not if the costs exceed expected benefits. Third, companies sometimes use CSR as a means to forestall more extensive and costly governmental regulation, though this motive is limited in the global context where additional regulation and enforcement are unlikely (Vogel, 2010). Fourth, companies engage in CSR as a response to societal demands (Fransen & Burgoon, 2012; Vogel, 2010), to the pressure of civil society organizations (Baron, 2001; Spar & La Mure, 2003), and to isomorphic pressures within industries (Lim & Tsutsui, 2012; Matten & Moon, 2008). Although there is evidence that some companies 'greenwash' their image (Laufer, 2003) by symbolically adopting CSR policies without altering their practices (Crilly, Zollo, & Hansen, 2012), there is also contrary evidence that some companies change their business practices substantially, despite profit setbacks, in response to societal pressures (see, e.g., the case of Nike in Zadek, 2004). Fifth, whether or not a company engages in CSR depends on the personal commitment of top managers or company owners (Baron, 2010).

A second barrier to the success of CSR is that companies may lack the capabilities to implement the formal commitments they make to CSR in response to societal pressures (Lim & Tsutsui, 2012). *Organizational capabilities* are the preconditions that enable companies to perform certain activities. A company's capabilities are embedded in its people, culture, processes, structures and technologies (Gold et al., 2001). As a result, they tend to resist short-term development or acquisition and need to be developed over time. Research has shown that companies must have multiple capabilities in order to implement CSR. For instance, as Gond, Igalens, Swaen and El Akremi (2011) indicated, companies must have sufficient human resources in order to implement their internal CSR policies. Similarly, Seitanidi and Crane (2009) have shown that it is crucial for companies to have the right capabilities in order to implement CSR effectively in partnerships with other companies and civil society organizations.

A third barrier to the success of CSR is *complexity*, that is, the lack of clarity about what the desired ends and the means to achieving them are and how means and ends interrelate. Global governance is inherently complex, in the sense that it involves many interrelated and interacting factors that are poorly understood (Schneider, Wickert, & Marti, 2017), as research on political (Weiss & Wilkinson, 2014), ecological (Levy & Lichtenstein, 2012) and social and economic (Gereffi, Humphrey, & Sturgeon, 2005) issues has shown. A high degree of complexity implies that the actors involved face a high degree of uncertainty about the results of the policies they adopt (Duncan, 1972).

Complexity is not only relevant in connection with companies that engage in CSR activities. Complexity might also impede the capacity of other stakeholders involved in or affected by CSR activities to pressure companies to engage in CSR and monitor CSR compliance. First, the complexity of business activities as well as of problem settings makes it difficult for stakeholders to differentiate between genuine efforts and mere greenwashing. Second, the multifaceted nature of global governance challenges and the resulting complexity imply potentially diverging interests between different stakeholder groups (Scherer & Palazzo, 2011) and heterogeneous institutional expectations (Greenwood et al., 2011). As a result, different stakeholder groups might disagree about the desirability of a certain CSR activity, and different institutions might prescribe or impede certain CSR activities or business behaviour in different ways. Third, government involvement in business-related problems, which often occurs in fragile states, considerably increases the complexity of problem settings, thus making it more difficult to successfully solve problems by means of CSR.

Social and environmental problems are often described as 'wicked' problems (Levin, Casore, Bernstein, & Auld, 2012; Rittel & Webber, 1973), that is, ill-defined problems to which there is no optimal solution. Attempts to solve 'wicked' problems may lead to unintended consequences. In the case of CSR, abortive solutions may entail increased costs for producers in developing countries (Khan & Lund-Thomsen, 2011; Vogel, 2010) or negative implications for societal groups that companies do not recognize as 'primary stakeholders' (Blowfield & Frynas, 2005). In such cases, companies are uncertain about the implications of the rules they comply with and of the policies they implement (Bromley & Powell, 2012). This uncertainty hinders companies from identifying the core problems of the issues they seek to address and from adopting appropriate and ultimately successful measures (Wijen, 2014).

A fourth barrier to the success of CSR concerns the *legitimacy* of a company's contributions to global governance. As long as companies operate within the confines of functioning democratic states, the legitimacy of these companies (Peter, 2004), and thus of their CSR activities, can be taken for granted, since democratic processes and legal enforcement mechanisms are potentially able to restrict business behaviour and to induce outcomes that conform with societal expectations. However, when a company's operations extend beyond the borders of a democratic state and beyond the reach of national law, its legitimacy does not derive automatically from its home country's institutional framework (Scherer & Palazzo, 2011). Furthermore, if an MNC's host country lacks a functioning institutional and regulatory framework, the corporation will have to make its own rules through its CSR activities or other forms of self-regulation. As a consequence, when companies engage in processes of regulation and in the provision of public goods outside the reach of a democratic state, they do so without sufficient legitimation; that is, without democratic authorization and in the absence of democratic control (Palazzo & Scherer, 2006).

## Mobilizing Companies as Governance Actors

### *Public policies for inducing private contributions to global governance*

On the whole, national authorities have only limited capacity to provide global public goods and regulate business on a global scale. Furthermore, 'international law does not provide easy solutions to the social and environmental issues posed by multinationals' (Zerk, 2006, p. 103), nor to the problems that are associated with the provision of public goods in the global context (Kaul et al., 2003). Companies, on the other hand, seem to have at least the potential to address such problems. However, as we argued above, the propensity of companies to confine their attention to very specific issues of governance and the problems that a lack of capabilities, high complexity and a lack of legitimacy pose limit their contributions to global governance. In order to overcome these limitations, one option for national authorities in functioning democratic rule-of-law states is to authorize companies to become agents of global governance. For this option to prove successful, governments need to provide mechanisms that will induce private actors to align their activities with the societal goals of global governance. Currently the scope for introducing direct governance-related regulations that are globally binding is limited. However, national policies that foster CSR can create a context that will provide private actors with the incentives, values and knowledge to act as agents of global governance and to help solve global problems of public policy.

Within the scope of governmental CSR policies, nation states address multiple issues that range from the problems associated with domestic labour markets and environmental protection to the goals of humanitarian foreign policy (Midttun et al., 2015). Governments address such issues in a number of ways, such as building capacity and improving transparency and public procurement (Steurer, Martinuzzi, & Margula, 2012). Although there is some evidence that governments take into account global problems when they design a national CSR policy (Knudsen et al., 2015; Midttun et al., 2015), most still focus on improving the economic performance and international competitiveness of the businesses that are based within their national borders (Knudsen & Brown, 2015).

In the following, we explore the potential of governmental policies to prompt companies to help resolve governance problems. For that purpose, we will develop a framework that can be applied to the study of CSR policies both in a national and in a global context. However, we will focus more on the global context, where problems of governance are more exacerbated by the complexity of the setting, the limited power of national legislation, and the weaker legitimacy of CSR activities outside the 'shadow of hierarchy'.

### *Dimensions and mechanisms of governmental CSR policies*

To understand how public actors can motivate private actors to contribute to global governance, it is necessary to identify the concrete measures that they need to take in order to overcome the problems that we described above. Steurer (2010) classified and summarized the various instruments that public policies on CSR frequently use as follows: legal, economic, informational, partnering and hybrid. Fox et al. (2002; see also Knudsen et al., 2015; Knudsen & Moon, 2017) have shown that in order to foster CSR, governments take various measures that range from endorsing CSR, facilitating companies' engagement in CSR and partnering with private actors to mandating adherence to minimum standards. Similarly, Abbott and Snidal (2009) discussed activities of governments and international organizations that comprise 'a wide range of directive and facilitative measures designed to convene, empower, support, and steer public and private actors engaged in regulatory activities' (Abbott & Snidal, 2009, p. 510). The purpose of these measures, which span the spectrum between hard law and soft law (see Abbott, Keohane, Moravcsik, Slaughter, & Snidal, 2000), is to mobilize businesses to take part in governance.

In order to enable a detailed analysis of the ways in which governments can make CSR work to achieve governance objectives, we describe four dimensions that include seven distinct mechanisms that we regard as key to addressing the shortcomings of voluntary CSR activities (see Table 1). These mechanisms consist primarily of the processes through which a certain outcome – in this case, solving problems of motivation, capabilities, complexity and legitimacy – is achieved (Bunge, 1997; Hedström & Ylikoski, 2010). In addition, we illustrate these mechanisms with practical examples to demonstrate their relevance and formulate the boundary conditions they are subject to on the level of companies as well as on the level of governments.

*Restrictions.* We describe as 'restrictions' the conditions that influence the extrinsic motivations for companies to refrain from some activities or engage in other activities. The guiding assumption underlying the conceptualization of the dimension of restrictions is that the preferences of companies and their managers or owners are fixed and that it is possible to steer CSR activities by modifying such 'restrictions'. Governments can use legislation to tighten restrictions (Kingsbury, Krisch, & Stewart, 2005) or modify restrictions indirectly – for example, by introducing incentives that prompt private actors to limit their behaviour in certain ways (Prakash & Hart, 2000). Restrictions are mediated by three core mechanisms that we describe below.

The first mechanism is *re-regulation*. Although prima facie it sounds paradoxical to use re-regulation to address gaps in governance where direct governance has failed to do so, recent research indicates that readjusting existing regulations and gradually 'hardening […] softer approaches' (Utting, 2005, p. 8) can be a potentially effective solution to such problems (Schrempf-Stirling, 2018). For example, France (Delbard, 2008) and Sweden (Regeringen, 2016) have introduced laws that require companies to comply with specific transparency standards (Kinderman, 2013), while the Foreign Corrupt Practices Act criminalizes the corrupt practices of companies whose shares are traded on the US securities market (Avi-Yonah, 2003). A recent initiative in Switzerland aims to hold international companies responsible for the violation of human rights and environmental standards in their host countries (Konzernverantwortungsinitiative, 2018). What these approaches share, despite their differences, is the attempt to attain the extraterritorial enforcement of domestic law in order to address the problematic implications of companies' operations in host countries (on extraterritorial enforcement of law see Colangelo, 2011; Kaczmarek & Newman, 2011; Putnam, 2009; Ueberbacher & Scherer, forthcoming).

Re-regulation increases the cost of non-compliance and thus creates an incentive for companies to comply. Furthermore, re-regulation helps address legitimacy problems through legitimacy spillovers, in which legitimacy is transferred from a regulator to a regulated company. As Peter (2004) argued, complying with the law 'automatically' legitimizes a company's activities. An important boundary condition is that the costs of non-compliance must exceed the benefits of non-compliance. In other words, for re-regulation to provide incentives for companies to comply with a particular law, the costs and penalties that non-compliant companies face need to be tangible. These costs include criminalization, as in the case of the US Foreign Corrupt Practices Act. If a law does not imply tangible implications with a high likelihood (as in the case of the US Alien

**Table 1.** Dimensions and mechanisms of governmental CSR policies that address the barriers to effective and legitimate CSR, and related boundary conditions.

| **Dimensions and mechanisms of governmental CSR policies** | | **How social mechanisms can make CSR work** | | | | **Boundary conditions on the firm level** | **Boundary conditions on the government level** |
|---|---|---|---|---|---|---|---|
| | | Change motivation | Develop capabilities | Reduce complexity | Increase legitimacy | | |
| Restrictions | Re-regulation | Increase cost of non-compliance | – | – | Create spillovers of legitimacy from regulators to regulated firms | Cost of non-compliance needs to exceed benefits of non-compliance | Governments require legitimacy as well as capabilities to enforce regulation |
| | Economic incentives | Increase opportunity costs of non-compliance | Increase propensity to develop capabilities | – | – | Benefits of compliance need to exceed benefits of non-compliance | Governments require a comprehensive understanding of firms' incentive structures |
| | Isomorphic pressures | Reduced legitimacy as a result of non-compliance | – | – | Foster the adoption of practices that are regarded as legitimate | Existence of a collective organizational environment | Governments require influence on the organizational field to which the target firms belong |
| Values and preferences | Deliberation and collective decision-making | Change the preferences of actors | – | Increase the information base of actors | Create solutions that are regarded as fair by all involved actors | Targeted firm needs to be willing to engage in deliberative processes and to reach consensus (instead of engaging in strategic bargaining) | Governments need to be willing to impartially support better arguments in deliberation processes |
| Knowledge and resources | Knowledge dissemination | – | – | Increase the information base of actors | – | Targeted firm needs to be willing to utilize provided knowledge | Governments require appropriate knowledge and create ways for disseminating knowledge |
| | Providing resources and creating conditions for capability development | – | Support the development of capabilities | – | – | Provided resources need to fit capability requirements; context conditions need to be conducive to capability development | Governments require resources and capacities that are necessary for creating conditions for capability development |
| Indirect influence | Empowering and enlisting intermediaries to improve CSR | Intermediaries can exercise pressure on business | Intermediaries can provide additional capabilities | Intermediaries can provide information | Collaboration with civil society can increase social acceptance | Targeted firms need to be accessible to intermediaries and require the capabilities to collaborate with them | Governments require legitimacy, access to intermediaries as well as sufficient knowledge and means to enlist intermediaries |

Tort Statute that enables plaintiffs to sue companies for the violation of human rights on a global scale), re-regulation is unlikely to change the behaviour of companies (Ruggie, 2018). An alternative to a tightening of regulation is the granting of regulatory relief if companies agree to subscribe to a certain CSR standard or initiative. If governments and companies are cooperative, such an approach constitutes a win-win outcome for both governments and involved companies (Potoski & Prakash, 2004). In the case of non-cooperation, however, regulatory relief is likely to lead to outcomes that are inferior to hard regulation. However, this argumentation holds only for business operations within the 'shadow of hierarchy'. Beyond the 'shadow of hierarchy', non-cooperation of business is more likely due to lower costs that such behaviour implies.

Re-regulation is subject to several boundary conditions on the level of governments. Most importantly, governments that aim to contribute to global governance through eliciting CSR activities require legitimacy in order to assure the social acceptance of such CSR activities. Building on a conception of legitimacy in which governments derive their legitimacy from democratic processes of public will formation (Habermas, 1996), we argue that autocratic or undemocratic governments do not have sufficient legitimacy as their decisions are not based on public agreement and support. Consequently, such governments are unable to elicit legitimate CSR activities, even if they might be able to implement regulatory policies in a comparatively effective manner. Furthermore, in order to engage in re-regulation governments require appropriate capabilities for enforcing regulation.

The second mechanism is that of *economic incentives*. This is one of the most common ways of regulating the behaviour of companies (Parker & Braithwaite, 2003). Companies orient decisions that relate to input factors and products to market prices. Governmental authorities may change prices or create additional profit opportunities in various ways. For instance, they may introduce and support the usage of mechanisms of certification or labels such as the Belgium Social Label (Moon et al., 2012). Such approaches may help create new markets (Bartley, 2003) and thus motivate companies to engage in responsible behaviour. Governments may also introduce practices of public procurement that require the suppliers of governmental agencies to adhere to certain social and ecological standards (McCrudden, 2007), or tax incentives related to CSR (Steurer, 2010).

All these economic incentives can motivate businesses to engage in CSR and develop the necessary capabilities for addressing issues of governance. Furthermore, these incentives are often linked to new market opportunities that promise companies higher profits or efficiency (Bernstein & Cashore, 2007). As a result, companies are more likely to adhere to certain environmental or social standards in order to participate in those markets and reap the potential economic benefits. In sum, if the economic benefits that accrue from compliance are sufficiently high (as in the case of non-state, market-driven governance systems), companies are likely to develop capabilities that are necessary for compliance and to eventually comply (Cashore, 2002). For governments that aim to change the economic incentive structures for companies it is crucial to possess a comprehensive understanding of these incentive structures. Without such an understanding, measures taken are potentially ineffective, or even counterproductive.

The third mechanism is mimetic *isomorphic pressure*. As research based on new institutional theory has shown, many organizational decisions are not guided exclusively by cost–benefit calculations, but also by the need to acquire legitimacy by conforming to societal expectations (DiMaggio & Powell, 1983). As Waddock (2008) has argued, when leading companies implement responsible business practices, competitors may be forced to adopt similar practices in order to be regarded as legitimate (Parker & Braithwaite, 2003). This form of pressure allows governments and other regulators to promote certain standards and foster this form of competition. For example, in the CSR strategy that the European Union launched in 2011, it urged companies to adhere to the OECD Guidelines for Multinational Corporations or the ISO 26000 norm for corporate responsibility

(European Commission, 2011). If leading companies adopt such standards, other companies may respond to the isomorphic pressure this behaviour will create by doing the same, so, eventually, these standards may become widespread. Although there is a danger that companies may adopt voluntary standards only ceremonially (see, e.g., Crilly et al., 2012), some researchers argue that adoption may become more substantial over time (Bromley & Powell, 2012; Haack et al., 2012).

Isomorphic pressure induces companies to comply with regulations by increasing the threat of illegitimacy for those that do not. This mechanism is likely to be particularly effective within relatively homogeneous and stable fields (DiMaggio & Powell, 1983), such as specific industries. For instance, the Equator Principles were rapidly adopted by companies in the area of project finance (Conley & Williams, 2011). In contrast, the adoption rates of broader initiatives that address highly diversified groups of companies, such as the UNGC (Sethi & Schepers, 2014), are rather moderate. A boundary condition for governments that aim to create isomorphic pressure is their influence on the field in which they aim to create such pressure. Especially in the realm of international business, such influence by a single government is likely to be partial. Nevertheless, governments have the capacity to support the institutionalization of certain standards or initiatives.

*Values and preferences.* The importance of values and preferences has been emphasized in previous research. Parker and Braithwaite (2003, p. 129) observed that empirical studies on the enforcement of law have already identified 'strategies of education, persuasion, and cooperation to coax businesses to comply voluntarily with regulatory rules'. We argue that these strategies are reflected in mechanisms through which the values and preferences, and thus the course of action, of decision-makers can be changed by addressing their intrinsic motivation. As Bernstein and Cashore (2007) argued, in processes of governance the existing norms that guide the behaviour of actors can change and new norms can emerge. Governmental CSR policies can influence the values and preferences of these actors so that they conform to specific regulatory objectives.

The core mechanism that is based on values and preferences and is available to the initiators of CSR policies is *democratic deliberation* and *collective decision-making*. As Abbott and Snidal (2009, p. 547; see also Baron, 2010) argued, one of the reasons for the increasing engagement of businesses in global governance is the commitment of top managers to the principles it serves. If governments foster the commitment of top executives to these principles, they can involve private actors in the task of addressing gaps in governance.

The theory of deliberative democracy (Habermas, 1996) is based on the assumption that within civil society the actors who are affected by a collective decision (or the civil society groups that champion these actors' positions) should engage in a debate about this decision. Deliberation can be understood as 'debate and discussion aimed at producing reasonable, well-informed opinions in which participants are willing to revise preferences in light of discussion, new information, and claims made by fellow participants' (Chambers, 2003 p. 309). Thus, in the course of deliberative processes, the preferences of participants can change through the exchange of arguments that challenge their validity claims and original positions (Habermas, 1996).

The participation of diverse actors in deliberative processes also has the potential to increase the legitimacy of the decisions that are taken in the course of these processes (Habermas, 1996). Norway's strong support of the UNGC (Midttun et al., 2015) illustrates how a government creates an opportunity for business leaders to engage in deliberative processes that have the potential to initiate learning processes among participants (Palazzo & Scherer, 2010) and eventually trigger a change in values and preferences.

A central boundary condition for deliberation and collective decision processes is the willingness of companies to participate in such processes. The proponents of soft approaches to transnational governance (see, e.g., Haack et al., 2012) argue that the low entry barriers that schemes such as the UNGC typically have are not a flaw, but make it easier to get many companies 'on board'. Subsequently, these companies display a higher likelihood to honour the commitments they have made in order to join the scheme. A further boundary condition which concerns companies to be included in deliberative processes as well as governments that aim to elicit CSR activities through the setting up of deliberative processes is that 'actors share a common frame of reference, which implies common knowledge and normative understandings, that is, that their life worlds sufficiently overlap' (Deitelhoff, 2009, p. 43).

Critics argue that the existence of such shared background understandings is unlikely (Grobe, 2010), and that deliberation as a means of changing the views of some of the participants' positions necessarily involves negotiations aimed at advancing specific and possibly narrow interests (van den Hove, 2006). As a result, there is a likelihood that differences between actors persevere (Fransen, 2011). For the case of CSR this would imply that deliberation about both the ends and the means of CSR is only to a limited extent suitable for promoting successful CSR activities, since actors might carry through their positions by means of powerful narratives (see, e.g., Shanahan, Jones, McBeth, & Lane, 2013) and not on the basis of better arguments, as postulated by theories of deliberative democracy. However, empirical evidence indicates that deliberative processes have the potential to modify gradually the interests and attitudes of the actors involved (see, e.g., Deitelhoff, 2009). An important precondition for the success of deliberative processes is the presence of an 'arbiter for better arguments' (Deitelhoff & Müller, 2005, p. 174) who can ensure adherence to deliberative principles and thus increase the likelihood of social learning among coalitions. Governments might take on such a role if they are impartial and willing to support better arguments.

*Knowledge and resources.* Companies need to have certain capabilities and resources in order to implement their CSR programmes substantially. Knowledge is a key resource and knowledge serves as the basis for decision-making. In addition, lack of capabilities can impede the substantial implementation of CSR policies, despite a company's willingness to honour its commitments. To increase the effectiveness of private contributions to global governance, public actors can take steps to provide knowledge and resources to assist the development of capabilities that are necessary for a substantial engagement of companies in global governance. Three core mechanisms are available for this purpose: again, deliberation, which involves collective decision-making, knowledge dissemination, and the provision of resources and the creation of conditions that enable companies to develop the necessary capabilities.

*Deliberation*, as we explained earlier, can motivate actors to change their views and behaviour and can also increase the legitimacy of private contributions to global governance. Furthermore, it can also increase the amount of knowledge that is available to the actors involved in governance. As Risse (2004) suggested, using arguments and persuasion in the course of deliberative processes is a 'learning mechanism by which actors acquire new information [and] evaluate their interests in light of new empirical and moral knowledge' (Risse, 2004, p. 288). This mechanism helps actors improve problem-solving, which is a key aspect of global governance. This suggestion echoes recent findings in cognitive psychology, which show that processes of interpersonal reasoning increase 'both in quantity and in epistemic quality the information humans are able to share' (Mercier & Sperber, 2011, p. 72).

*Knowledge dissemination*, the second core mechanism related to knowledge and resources, concerns the creation and distribution of knowledge by actors already involved in public governance or by specialized agencies (Zürn, 2004). As Streck (2002) has shown, generating and disseminating knowledge on the challenges of governance through networks that centre on public policy is conducive to the effectiveness of initiatives in global governance. The partnerships that governments form with private actors to pursue CSR goals are a prominent example of such networks (Moon et al., 2012). This suggests that supporting organizations and networks that can generate and distribute knowledge on the challenges of governance can help companies overcome the obstacles that the complexity of governance-related tasks poses. Knowledge dissemination increases the information on which companies base their decisions and thus enables them to address complex issues more effectively. An important boundary condition of knowledge dissemination is the willingness of companies to utilize the available knowledge. Thus, acquiring knowledge on governance challenges is a necessary but far from sufficient condition for effective CSR. A crucial boundary condition for governments that aim to engage in knowledge dissemination is that they possess the relevant knowledge. Furthermore, governments require the capabilities for knowledge dissemination.

*Providing resources and creating conditions for capability development*, the third core mechanism, addresses the potential lack of companies' capabilities to contribute to global governance. Companies often commit to certain CSR activities without possessing the capabilities to put their commitments into action (Lim & Tsutsui, 2012). National governments can address this problem by making available the necessary resources for developing such capabilities. For instance, governments can support the development of CSR-related business networks and training, as the Danish government's programme 'Profits with Principles' illustrates (see Midttun et al., 2015). Alternatively, governments can create context conditions that enable companies to develop the necessary capabilities themselves. For example, the German federal government has introduced a CSR award that serves as an incentive for companies to develop CSR-related capabilities (Bundesministerium für Arbeit und Soziales, 2017). A crucial boundary condition in this case is the fit between the necessary capabilities and the resources and context conditions for developing the right capabilities that governments create. For governments to successfully engage in the provision of resources and the creation of conditions for capability development, they require such resources.

*Indirect influence.* Whereas the previous dimensions and related mechanisms focus on dyadic constellations of governments and companies, the concepts of orchestration (Abbott, Genschel, Snidal, & Zhangl, 2015) and regulatory intermediaries (Abbott, Levi-Faur, & Snidal, 2017) open up the possibility of triadic constellations in which governments exercise *indirect influence* over companies. In such cases a regulator enlists or empowers an intermediary to effect a change in the behaviour of a target. Orchestration and governance through regulatory intermediaries are specific regulatory modes that primarily focus on how regulators aim to change the behaviour of targets through enlisting third parties such as NGOs, transgovernmental networks and private–public partnerships. However, the suitability of these concepts for understanding cases in which governments empower or enlist intermediaries to monitor businesses and increase CSR performance has not been analysed thus far. We argue that governments can exercise indirect influence on companies to engage in CSR activities through empowering and enlisting intermediaries such as NGOs, which can serve as 'fundamentally important regulators' (Braithwaite, 2006, p. 888), especially when the capabilities of local authorities for monitoring and law enforcement are very limited.

States can enlist or empower intermediaries to exercise pressure on companies to participate in governance processes through CSR. For example, states can support NGOs that pressure companies to make CSR commitments and also to meet those commitments. Intermediaries can also contribute to and enhance the states' and targets' insufficient capabilities and knowledge, as is often the case in cross-sector partnerships where NGOs assist companies in their CSR activities (see, e.g., Seitanidi & Crane, 2009). Eventually, since intermediaries such as NGOs may have greater legitimacy than the companies that engage in CSR activities, governments can increase the legitimacy of the CSR activities induced by their policies through enlisting or empowering intermediaries to participate in these activities.

An important boundary condition for such indirect forms of influence on the level of companies is the susceptibility of companies to the pressure of intermediaries (see, e.g., Spar & La Mure, 2003). For instance, highly visible companies in business-to-consumer markets are more likely to be susceptible to consumer pressure than less visible companies in business-to-business markets. On the level of governments, crucial boundary conditions are the legitimacy of the intervening government, access of the government to suitable intermediaries, and the willingness of these intermediaries to demand CSR compliance from companies.

## Discussion

In this article we explored motivation, capabilities, complexity and legitimacy as the key factors that determine whether a company can contribute to global governance. We have shown how governments, within the scope of their CSR policies, can utilize several mechanisms to increase the effectiveness and legitimacy of CSR activities. The theoretical framework presented in this paper connects the perspectives of organization theory and governance research to shed light on several pertinent questions on how companies and governments interact in the context of global governance. In this section, we outline the contributions of our study.

### *Implications of a social mechanisms perspective on governmental CSR policies*

Our study is a response to calls on researchers to go beyond merely formulating and describing different forms of governmental CSR policies (Knudsen & Moon, 2017) and to specify the mechanisms underlying such policies (Marques, 2016). Our main contribution to this research is a framework that allows a more fine-grained analysis of such policies. Our framework specifies the four main barriers that prevent companies from engaging in CSR successfully so that some contribution to the social good is made; namely, problems with motivation, capabilities, complexity and legitimacy. On this basis we discuss how the social mechanisms that underlie various governmental CSR policies can help overcome these barriers.

In this respect, our study adds to recent contributions on orchestration (Abbott et al., 2015, 2016) and regulatory intermediaries (Abbott et al., 2017) that primarily focus on how actors such as intergovernmental organizations can enlist third parties to 'govern a party by proxy' (Abbott et al., 2016, p. 720). We extend these concepts by explicitly considering cases in which governments enlist or empower intermediaries with the objective to improve the CSR performance of companies. Delegating governance tasks to intermediaries is an important facet of governmental CSR policies. Governmental CSR policies that involve intermediaries do resonate with extant research on orchestration (see, e.g., Mattli & Seddon, 2015) and regulatory intermediaries (see, e.g. De Silva, 2017) in many ways. Nevertheless future research should analyse in more detail how indirect influence works in the case of governmental CSR policies.

However, many facets of governmental CSR policies are explicitly excluded from the works on orchestration and regulatory intermediaries, which are restricted to tripartite constellations of regulators (such as national governments), intermediaries (such as transnational governance schemes) and targets (such as companies). The perspective developed in this article also complements these concepts by focusing on the mechanisms of the governmental CSR policies that shape the CSR activities of companies without an intermediary.

In real-life settings, the barriers to effective and legitimate contributions of private actors to global governance, which this study discusses, are likely to occur jointly. For that reason, public actors engaged in CSR policies need to consider simultaneously all the barriers that we described and to design policies that factor in motivation, capabilities, complexity and legitimacy. Furthermore, to address these barriers, actors need to employ complementary mechanisms that together help address the issues that each of these factors influences. As Bernstein and Cashore (2012, p. 603) argue in the context of global environmental governance, 'it is often the interaction of mechanisms and processes, sometimes along multiple pathways, that create collective influence'.

Our framework allows us to explore how different forms of governmental CSR policies interact. Such an analysis is particularly important in light of the need to address complex governance challenges by means of sufficiently complex policy responses. That is, due to their complexity such responses are likely to be subject to conflicts and contradictions, which need to be understood in order to construct and modify governmental CSR policies. For instance, supporting isomorphic adaptation processes among companies might limit the degree of 'democratic experimentalism' (Dorf & Sabel, 1998) in collective decision-making processes, through which companies seek to solve problems in ways that fit their specific circumstances. As a second example, the tightening of regulation, which amounts to a change of extrinsic motivation, might result in a reduction of intrinsic motivation (Titmuss, 1970). Furthermore, our framework enables us to identify the social mechanisms that underlie governmental CSR policies and to analyse the boundary conditions that determine their effectiveness and prospects of success.

### *Governmental CSR policies between voluntariness and obligation*

Our article also contributes to the longstanding 'voluntary/mandatory debate' (Ruggie, 2018, p. 318) which is an important part of the discussion about CSR. There are strong incentives for companies to prioritize profit over social or environmental objectives (see, e.g., Banerjee, 2008; Fleming & Jones, 2013). The potential profits accruing from CSR do not seem to be sufficient to motivate companies to address effectively negative externalities and to foster business contributions to the public good (see, e.g., Crane, Palazzo, Spence, & Matten, 2014). To induce companies to do more than what is economically rational (as in the case of instrumental CSR; see McWilliams & Siegel, 2001) in order to contribute to the public good, the economic incentive structures for businesses need to change. As our analysis shows, this can be achieved by increasing the cost of non-compliance (e.g. by imposing penalties) or the opportunity costs of failing to comply and to acquire specific capabilities (e.g. by generating market incentives). However, such changes are a necessary but not sufficient condition for inducing companies to contribute to global governance, because a lack of capabilities on the part of companies and the complexity that characterizes CSR-related issues act as potential barriers. To overcome these barriers, governments need to assist companies to develop capabilities that are necessary for addressing governance problems and provide the knowledge to tackle the complexities of the 'wicked' problems of global governance. Legitimacy, as we have shown, can be a further barrier. This means that governmental CSR policies have to ensure that companies' CSR activities that are induced by governmental CSR policies are socially accepted by those actors who bear the consequences of these activities.

In sum, our findings imply that, for businesses to contribute effectively and legitimately to global governance, governmental CSR policies need to take into account the problems of insufficient motivation, lacking capabilities, high complexity and inadequate legitimacy. Resolving any of these problems separately is not sufficient. We argue that for CSR to be successful, mechanisms that combine voluntary and obligatory elements seem most appropriate. Extant practice (see, e.g., the recent CSR strategy of the European Commission, 2011) and research (see Locke, Rissing, & Pal, 2013, for an overview) have emphasized the need for a mixture of private and public regulation. The framework that we present in this paper goes towards an understanding of the potentials and the limits of voluntary and obligatory elements with regard to the different barriers to successful CSR, and thus also of the prospects for the success of governmental CSR policies. Our considerations imply that the concept of CSR, in order to meet its promise of limiting the externalities of business operations and contributing to the public good, has to include a significant obligatory component. This implies that states have a greater responsibility to interact directly, or through intermediaries indirectly, with business to enable effective and legitimate CSR activities.

### *Preconditions for the effectiveness and legitimacy of CSR policies on the level of governments*

Our third contribution responds to the principal concern that the barriers for effective and legitimate CSR on the level of companies also might impede the effectiveness and legitimacy of governmental CSR policies. First, national governments pursue multiple regulatory goals that may be complementary, overlapping or conflicting. For instance, binding CSR regulations are regularly met by fierce resistance from companies and trade associations (Kinderman, 2013, 2016) that may 'significantly weaken the resulting frameworks' (Kinderman, 2016, p. 31). As a result, governments may lack the motivation to engage in CSR policies that serve the public interest. Second, governments, like companies, may lack the necessary capabilities for developing and implementing effective and legitimate CSR policies. Third, as Moon and colleagues (2012, p. 35) argued, 'little attention is paid to questions of performance and impact in government CSR policies'. That is, the success of such policies, which hinges on the effectiveness and the legitimacy of the CSR activities, is difficult to measure due to the inherent complexity of global governance challenges.

Fourth, the legitimacy of CSR policies becomes precarious if the legitimacy of the governments involved clearly does not meet the standards of democracy, due process and rule of law. PR China for instance, implements many environmental policies that are largely effective, but does not meet the standards of democratic legitimacy and even disregards human rights. Thus, although PR China is regarded as an increasingly active player in global governance (Bach, Newman, & Weber, 2006), its engagement in global governance is likely to lack legitimacy or to fail effective implementation. Consequently, CSR policies initiated by actors that lack legitimacy are likely to result in illegitimate CSR activities on the part of companies (on the difficulties of Chinese MNCs in implementing CSR abroad, see, e.g., Maurin & Yeophantong, 2013).

## Conclusion

Through CSR, companies can contribute to global governance by addressing the externalities of their operations and providing public goods in cases where national governments are unable or unwilling to do so. However, several barriers stand in the way of effective and legitimate CSR activities. We argue that governmental CSR policies can address these barriers even in the absence of the 'shadow of hierarchy', which many consider crucial (see Wolf, 2005), and that their regulatory reach can be extended beyond national borders in order to delegate governance tasks to companies. We described four main ways of achieving this: (a) modifying available restrictions, (b) influencing the values and preferences of decision-makers, (c) providing private actors with necessary knowledge on regulatory issues and with the resources they need to develop capabilities that are necessary for the implementation of CSR, and (d) empowering and enlisting third parties to pressure companies towards CSR compliance. In these ways governmental CSR policies can help businesses overcome the barriers that the lack of sufficient motivation, capabilities, knowledge and legitimacy pose.

We pointed out that these barriers can also hinder governmental CSR policies: governments' objectives may not always reflect collective goals; governments may lack the capabilities to develop and implement CSR policies or may not have sufficient knowledge on regulatory issues and aspects of implementation; and they may lack legitimacy. These shortcomings may reduce the effectiveness and legitimacy of governmental policies aimed at inducing private contributions to governance. The conclusion we can draw from our analysis is that realizing the potential of governmental CSR policies depends on overcoming the problems that we have described in this paper, both on the level of companies and on the level of governments.

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